

indistinguishable from the claimed method of intended use and would have been able to perform the claimed function of oxygen indication.” (emphasis added). Applicants respectfully traverse this rejection because the claimed product-by-process has two product elements, whereas only one of the two elements is even remotely disclosed in WO 98/15645.

Anticipation requires that each and every element of the claimed multi-layered food packaging film be disclosed in a single prior art reference. While the Examiner only examined the product-by-process claims (6-10), the restriction requirement that the Examiner made final now provides that the claimed process is patentably distinct from the pending product claims 6-10.

Claim 6 has two product elements. The first is an indicator polymer product film that is described according to the process elements. The second is a plurality of non-oxygen sensing polymer films. The plurality of polymer films is bonded to the indicator polymer product film. Therefore, in order for a single prior art reference to anticipate such a product claim with two elements bonded to each other, the single prior art reference must disclose those two elements and the fact that they are bonded to each other.

WO 98/15645 does not disclose the two required elements of claim 6. Moreover, the description of the rejection seems lost in methods of use rather than the fact that the Examiner already considers the product claims patentably distinct from the process claims used to make one component of the product. Accordingly, in view of the fact that WO 98/15645 does not disclose both required elements and their juxtaposition relative to each other, WO 98/15645 does not anticipate the invention of claims 6-10. Applicants respectfully request withdrawal of this rejection because the required showing of anticipation has not been made.

35 U.S.C. 103 Rejection

Claim 10 was rejected under 35 U.S.C. 103 as unpatentable in view of WO 98/15645. The Examiner seems to base this rejection on an allegation that claim 10 is an “optimization of a result effective variable” that is within the ordinary skill in the art. The Examiner further states (without basis of support) that the “result variable is one that has predictable and well known results.” As best applicants can determine, the Examiner seems to base the conclusion of obviousness on the fact that polymers melt at higher temperatures to allow polymers to soften or liquefy. Applicants respectfully traverse this rejection because the Examiner has failed to make a *prima facie* showing of unpatentability of the claimed invention.

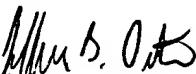
Claim 10 is dependent upon claim 6. Therefore, claim 10 incorporates all of the limitations of claim 6 and adds a further limitation of a melting temperature range for the indicator polymer product film element of claim 6. The issue of whether or not one of ordinary skill in the art would know or not know melting temperature ranges of various polymers that incorporate an oxygen sensing material is largely irrelevant to a determination of patentability of claim 10.

Could the Examiner have been referring to the two elements of claim 6? Perhaps not because the discussion of this rejection does not even allege that WO 98/15645 discloses or suggests the two elements of claim 6 and how they are bonded to each other.

Therefore, the present rejection cannot reject the subject matter of claim 10 when it is dependent on claim 6. Therefore, in view of the failure to make a *prima facie* showing of unpatentability regarding the limitations of claim 6, the question of whether or not one of ordinary skill in the art would have or would have not know various melting temperature ranges is moot. Applicants respectfully request withdrawal of this rejection because no *prima facie* showing of unpatentability has been made.

Applicants respectfully request withdrawal of the rejections and allowance of pending claims 6-10.

Respectfully submitted,


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Clean Copy of Claims:

6. A multi-layered food packaging film having an ability to detect oxygen presence within a packaging, comprising an indicator polymer product film and a plurality of non-oxygen sensing polymer films bonded thereto, wherein the indicator polymer product is made by a process comprising:

(a) adding an oxygen-sensitive indicator to a thermoplastic polymeric material heated to just above its melting temperature;

(b) mixing the oxygen-sensitive indicator thoroughly within the thermoplastic polymeric material while continuing the heating to maintain the thermoplastic polymeric material in a substantially liquid form; and

(c) forming the mixture into an end product form of indicator-polymer product.

7. The multi-layered food packaging film of claim 6 wherein the forming step is accomplished by an extrusion process, a molding process or an injection molding process.

8. The multi-layered food packaging film of claim 6 wherein the oxygen-sensitive indicator is selected from the group consisting of polycyclic aromatic hydrocarbons, pyrene, fluoranthene, decacylene, diphenylanthracene, benzo(g,h,i)perylene, porphyrins, platinum or palladium octaethylporphyrin, tetraphenylporphyrin, tetrabenzporphyrin, chlorins, bacteriochlorins, isobacteriochlorins, chlorophyll), and combinations thereof.

9. The multi-layered food packaging film of claim 6 wherein the polymeric material is selected from the group consisting of linear ethylene alpha olefin copolymers, ethyl vinyl acetate, LLDPE, VLDPE metallocene catalyzed polymers, and combinations thereof.

10. The multi-layered food packaging film of claim 6 wherein the melting temperature is from about 140 °C to about 240 °C.